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C O N F I D E N T I A L SECTION 01 OF 02 KIEV 000456

SIPDIS

E.O. 12958: DECL: 02/02/2016

TAGS: [EINV](#) [PGOV](#)

SUBJECT: UKRAINE: OLIGARCH PINCHUK ON NIKOPOL FERROALLOY
AND POST-ELECTION POLITICS

REF: A. 05 KIEV 4925

[B](#). 05 KIEV 3660

Classified By: Political Counselor Aubrey A. Carlson for reasons 1.4(b,
d)

[1](#). (C) Summary: Oligarch Viktor Pinchuk suggested, in a February 1 conversation with visiting Project for Transitional Democracies President Bruce Jackson and PolOff, that he would not appeal his case to a European court after the Ukrainian Supreme Court refused January 20 to hear his appeal against a ruling invalidating his 2003 purchase of Nikopol Ferroalloy Works. He repeated his willingness (ref A) to pay more money to retain his ownership rights, but again claimed the Ukrainian government was not prepared to take him up on the offer. Pinchuk predicted that former Prime Minister Yanukovych would not emerge as prime minister after the March parliamentary elections; he hoped a young, progressive technocrat might become prime minister as a result of a coalition joining Yushchenko's People's Union Our Ukraine and Yanukovych's Party of Regions. A leader of a party with a smaller representation in the new parliament might also join a coalition and emerge as a compromise prime minister. Recently leaked documents from the May 2005 interrogation of Mykhailo Chechetov, the State Property Fund Chair at the time of the Nikopol privatization, suggest that then-President Kuchma ordered the State Property Fund to rig the privatization so that his son-in-law Pinchuk would take control of Nikopol. End summary.

Investor and Worker "Human Rights"

[2](#). (C) Pinchuk said, after three months of battling, the Supreme Court had finally heard his lawyers' arguments January 17 on lower court rulings that declared illegal his 2003 purchase of a 50-percent-plus-1 share stake of Nikopol Ferroalloy Works (NFW). (Note: Pinchuk retains another 24-percent share that he purchased in a separate transaction. Internecine conflict within the GOU in its effort to "reprivatize" NFW was one of the proximate causes of the dismissal of the Tymoshenko Cabinet in September 2005.) At the hearing, the presiding judge asked whether the investors or some other party had acted illegally in the sale. After hemming and hawing, the government lawyers admitted that the State Property Fund had acted illegally, but not the investors, in the privatization. Noting that Ukraine's signing of the European Convention on Human Rights obligated Ukraine to follow European courts' precedents, Pinchuk claimed European courts had never ruled against investors and overturned a privatization resulting from government wrong-doing. Pinchuk, however, appeared to dismiss the possibility of an appeal when he noted that the European Court of Human Rights would not hear such an appeal for a year and, in the meantime, the appeal would not suspend the legal process in Ukraine. Pinchuk suggested that his efforts to retain Nikopol would be ultimately fruitless, since President Yushchenko and Privat Bank were gunning for him. (Note: The press reported the Supreme Court ended its review on January 18 and, on January 20, refused to consider the appeal, thereby allowing the lower court ruling to stand.)

[3](#). (SBU) (Note: Also on January 20, Interior Minister Lutsenko confirmed that transcripts of the May 2005 interrogation of former State Property Fund Chair Chechetov leaked to internet news sites were genuine. In the protocol of the questioning, available at www.obozrevatel.com.ua, a website owned by Tymoshenko associate Mykhailo Brodsky, Chechetov acknowledged that privatization of certain enterprises, including Nikopol and Kryvorizhstal, did not occur according to established privatization guidelines and were illegal, but had been carried out on orders of top Ukrainian officials, including then-President Kuchma and Kuchma's son-in-law Pinchuk. Kuchma had ordered Chechetov to listen to Pinchuk's suggestions and, if possible, do what Pinchuk asked. Since Kuchma's phone call was interpreted at the State Property Fund as an instruction to sell the plant to Pinchuk, special competition conditions were developed to ensure that a company belonging to Pinchuk fit the description. End note.)

[4](#). (C) Pinchuk told Jackson the judge had urged the parties to reach an out-of-court settlement. Pinchuk was willing to do so and pay a higher price, but the State Property Fund and Cabinet of Ministers had refused to consider a negotiated

deal. Pinchuk noted that this stance contradicted President Yushchenko's public statements that he was willing to negotiate a settlement with Pinchuk and his partners. Pinchuk said this was only the latest example of contradiction between Yushchenko's public statements and his private stance. When asked, Pinchuk estimated his 50-percent share, for which he paid \$80 million two-and-a-half years ago, to be worth somewhere between U.S. \$200-300 million, but he added that the company's value had dropped somewhat due to current uncertainties. (Note: Minority shareholder Privat bank claimed that, at a fair auction, Pinchuk's 50-percent-plus-1 share would have fetched about \$190 million when Pinchuk originally bought it in 2003, and estimated that it would now sell for \$500 million. A tax lawyer who helped prepare Nikopol's books for sale to Russian investors in early 2005 told us that Nikopol had \$1 billion in turnover in 2004 and that Pinchuk was looking to sell his stake for \$350 million. The GOV publicly projects a sale price of \$1 billion.)

15. (C) Pinchuk said he was gratified Nikopol's workers had genuinely rallied around his cause. He said the workers were pleased with their salary and benefits ("social guarantees") and were fearful about their possible treatment if Nikopol were to return to government ownership. Pinchuk claimed the central committee of Nikopol's trade union wanted him to retain his ownership because he provided the "best example in the country," which could be cited in reaching deals with other "oligarchs" (note: Pinchuk's term). (Comment: The genuineness of Pinchuk's support among the workers is somewhat suspect; those who have participated in demonstrations against the government's actions are known to have been paid for their efforts.)

Coalition Options

16. (C) Pinchuk predicted Party of Regions would top the parliamentary (Rada) elections, and he hoped Yulia Tymoshenko and her bloc would not rise higher than third, with Yushchenko's People's Union Our Ukraine (POUO) in second. He thought Regions would get 20-25 percent, POUO would get 15-20 percent, and Bloc Yulia Tymoshenko (BYuT) 10-20 percent. He thought there was a real possibility of a coalition between President Yushchenko's POUO, and former Prime Minister Yanukovych's Party of Regions. If so, Pinchuk ruled out the possibility of Yanukovych becoming prime minister. The best outcome, he opined, would be if such a coalition chose a young, progressive politician, like current Economics Minister Yatsenyuk, as a compromise prime minister. Another possibility might be a prime minister coming out of a coalition with parties holding fewer seats in the Rada. Current Rada Speaker Lytvyn or Socialist Party head Moroz might then emerge as prime minister, Pinchuk hypothesized.

17. (C) Pinchuk suggested Tymoshenko would not be prime minister "in the first round" but she might yet become prime minister "later." When asked to explain, Pinchuk said, since any coalition after the March Rada elections would be fragile, he could see the possibility of several governments in quick succession, "like Italy before Berlusconi." He thought that Yushchenko had wasted a unique time during the last year, when Ukraine had the potential to rise to new heights, but instead had fallen back down. Stressing that he was presenting only his personal views that should not be shared, Pinchuk said he thought Yushchenko had been deeply affected by the poisoning attempt, whose results he saw "every time he looks in the mirror." Partly as a result, Yushchenko had difficulty exercising the decisive and consistent leadership necessary. Pinchuk concluded that he was "pessimistic in the short run but optimistic in the long run" about Ukraine's future.

18. (U) Visit Embassy Kiev's classified website:
www.state.sgov.gov/p/eur/kiev.
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